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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,605	07/18/2003	David M. Thompson	1058	4295

7590 08/26/2004
Andrew W. Ludy
17 Sherwood Way
Landing, NJ 07850

EXAMINER

KING, ANITA M

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,605

Applicant(s)

THOMPSON ET AL.

Examiner

Anita M. King

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

This is the first office action for application number 10/622,605, Adjustable Bimini Bracket, filed on July 18, 2003.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble in claim 1 (also see claims 6 and 11) clearly indicates that a subcombination is being claimed, e.g., "an adjustable bimini bracket for use in connection with a boat having a railing tubular member on either side of the boat, and a bimini having a top, a plurality of tie downs, and a plurality of strut tubular members...". This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "an adjustable bimini bracket," the boat and bimini being only functionally recited. This presents no problem as long as the body of the claim also refers to the boat and the bimini functionally.

The problem arises when the boat or portions thereof is positively recited within the body of the claim, such as in the phrase in line 9 of the claim, "so that the bimini bracket will slidingly engage the tubular member...". The examiner cannot be sure if

applicant's intent is to claim merely the adjustable bimini bracket or the adjustable bimini bracket in combination with the boat.

Applicant is required to clarify what the claims are intended to be drawn to, i.e., either the adjustable bimini bracket alone or the combination of the adjustable bimini bracket and the boat. Applicant should make the language of the claim consistent with applicant's intent. In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the *subcombination* and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention, the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent 4,736,921 to Zane et al., hereinafter, Zane. Zane discloses an adjustable bracket (10) capable of connecting a bimini to a boat railing, the bracket comprising: a left side plate and a right side plate, the left and right side plates being generally parallel and spaced apart, the left and right side plates extending between opposite first and second ends; a transverse plate (@26) extending between the left and right side plates

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intermediate the first and second ends, so that the bracket can slidingly engage a tubular member between the left and right side plates, and adjacent the transverse plate; a biasing means (50) for biasing the first ends of the left and right side plates toward one another, the biasing means being hand operated, clamping the tubular member between the left and right side plates, thereby preventing the bracket from sliding on the tubular member, and the biasing means will be hand loosened, allowing the bracket to slide on the tubular member; a fastening means (48) adjacent the second ends of the left and right side plates, for fastening the terminus of one of the strut tubular members to the bracket; wherein the left and right side plates each have a first hole therethrough adjacent the first end, the first holes being collinear; the biasing means includes a first bolt (80) and a hand knob (76) engaging the first holes; wherein the left and right side plates each have a second hole therethrough adjacent the second end, the second holes being collinear; the fastening means includes a second bolt (60) and a nut (64) engaging the second holes; wherein one of the first holes includes a first shaped recess (84) therein to receive a similarly shaped member on the head of the first bolt, so as to resist turning the first bolt while turning the hand knob; and wherein one of the second holes includes a second shaped recess (68, 70) therein to receive a similarly shaped member on the head of the second bolt, so as to resist turning of the second bolt while turning the nut.

Allowable Subject Matter

Claims 7-10 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claim 11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 1,056,576 to Olson

U.S. Patent 2,970,798 to Fritchle et al.

U.S. Patent 2,405,925 to Poupitch

U.S. Patent 3,995,820 to Einhorn

U.S. Patent 5,137,243 to Stevens et al.

U.S. Patent 5,161,909 to Crouse et al.

U.S. Patent 5,295,727 to Kao

U.S. Patent 5,395,018 to Studdiford

U.S. Patent 5,464,187 to Linkner, Jr.

U.S. Patent D392,180 to Bilow

U.S. Patent 5,782,040 to McCartan

U.S. Patent 6,390,436 to Barnes et al.

U.S. Patent 6,672,241 to Warfel et al.

U.S. Patent 6,685,385 to Ledingham

Olson discloses a fence post brace having a biasing means and a fastening means at opposing ends. Fritchle et al. disclose a clamp having opposing clamping seats.


Poupitch discloses a fastening device having a plate member comprising a boss for receiving a fastener. Einhorn discloses an adjustable clamping member having ribs disposed on an outer surface. Stevens et al. disclose a holding device for a tapered shaft. Crouse et al. disclose a packaging clip having left and right side plates and a transverse plate. Kao discloses a bracket having a hexagonal hole for receiving a fastener. Studdiford discloses a mount or holder apparatus. Linkner, Jr. discloses a mounting bracket having a boss for receiving a fastener. Bilow discloses a chair clip. McCaran and Barnes et al. both disclose a breakaway signpost having left and right side plates and a transverse plate. Warfel et al. disclose a collapsible frame for a cloth canvas top for a boat. Ledingham discloses a versatile guide rail clamp having hexagonal recesses for receiving fasteners.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (703) 308-2162. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A. Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

August 18, 2004